

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James Darnell Scott,)	Civil Action No.: 0:12-1538-BHH
)	
Plaintiff,)	
)	
v.)	
)	
Albert Pearson, <i>Responsible Authority</i>)	<u>OPINION AND ORDER</u>
<i>over South Carolina Dep't of</i>)	
<i>Corrections Special Investigation Unit;</i>)	
Jannita Gaston, <i>South Carolina Dept.</i>)	
<i>Of Correction State Classification;</i>)	
William Byars, <i>South Carolina Dept.</i>)	
<i>Of Corrections Director; Warden</i>)	
Anthony Padula; Associate Warden)	
Margaret Bell; Associate Warden)	
John Brooks; Major James Dean; and)	
Ms. Reames, <i>Institution Classification</i>)	
<i>Chairperson,</i>)	
)	
Defendants.)	
)	

OPINION AND ORDER

Plaintiff James Darnell Scott ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, filed this civil rights action under 42.U.S.C. § 1983 on June 11, 2012. After a successful appeal to the United States Court of Appeals for the Fourth Circuit, the undersigned adopted the Report and Recommendation of the Magistrate Judge, and denied Defendants' motion for summary judgment in light of the *Incumaa*¹ decision.

There is no right to appointed counsel in Section 1983 cases. *Harwick v. Ault*, 517 F.2d 295 (5th Cir. 1973). The court is granted the power to exercise its discretion and appoint counsel for an indigent in a civil action. 28 U.S.C. § 1915(d); *Smith v. Blackledge*, 451 F.2d 1201 (4th Cir. 1971). However, the appointment "should be allowed only in

¹ *Incumaa v. Stirling*, 791 F.3d 517 (4th Cir. 2015).

exceptional cases." *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975).

Here, Plaintiff has presented evidence that exceptional circumstances exist in this case. Accordingly, the Court requested that Attorney Steven Buckingham represent Plaintiff in this action. Attorney Buckingham has agreed to undertake representation of Plaintiff. The Court hereby appoints Steven Buckingham to represent Plaintiff from this point to the conclusion of the trial. Should the result of trial be unfavorable for Plaintiff, appointed counsel will be deemed to have completed his duties, and Plaintiff will be required to file his own notice of appeal, if applicable.

Attorney Buckingham shall file a Notice of Appearance in this matter and, thereafter, is given sixty (60) days to withdraw or file any motions or responses to motions which he deems appropriate.

Counsel for both parties are to confer on a mutually agreeable joint scheduling order with a jury selection date after March 31, 2017, and submit that proposed order to Judge Hendricks' ECF e-mail box. If counsel cannot agree on a scheduling order, separate proposed orders can be submitted.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

September 21, 2016
Greenville, South Carolina